

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

**MICHAEL Z. MORICZ**, an individual,

Plaintiff,

v.

**GOOGLE, INC.**, a Delaware corporation,

Defendant.

Case No. 10-cv-01240-RSL

**JOINT CLAIM CONSTRUCTION  
AND PREHEARING STATEMENT**

The parties hereby submit this Joint Claim Construction and Prehearing Statement, pursuant to Local Patent Rule 132 and this Court's Scheduling Order (Dkt. # 27), to construe the disputed claim terms in U.S. Patent Nos. 7,693,956 ("956 Patent"); 7,716,303 ("303 Patent"); and 7,730,160 ("160 Patent") (collectively, "patents-in-suit").

**I. Undisputed Claim Term**

The parties agree on the construction of the following term:

<b>PATENT CLAIMS</b>	<b>TERM</b>	<b>AGREED CONSTRUCTION</b>
'956: 1-6, 8 '303: 1, 14 '160: 1, 3, 5, 10	Input field	Graphical component which allows a user to provide textual or graphic input.

## II. Disputed Claim Terms

Below is a table identifying the terms to be construed in connection with the *Markman* hearing (“Hearing”) currently scheduled for December 8, 2011 for each of the three asserted patents.

	DISPUTED TERM	PATENT CLAIMS
1.	Ahead of	‘956: 1, 4. ‘303: 1, 16. ‘160: 1.
2.	Answer	‘956: 1, 2, 4, 5. ‘303: 1, 14, 16. ‘160: 1, 3, 10.
3.	Answer page	‘956: 1, 4. ‘303: 1, 16. ‘160: 1.
4.	Dynamically generate	‘956: none. ‘303: 1. ‘160: 1.
5.	Index / indexing	‘956: 1, 4. ‘303: 1. ‘160: 1.
6.	Information location	‘956: 1, 3, 4, 8. ‘303: 1, 14. ‘160: 1, 5, 10.
7.	Information page	‘956: 1, 2, 3, 4, 8. ‘303: 1. ‘160: 1.
8.	Query	‘956: 3, 8. ‘303: 1. ‘160: 1, 5.
9.	Search the Internet	‘956: 1, 4. ‘303: 1. ‘160: 1.
10.	Second information location from which the input field is generated	‘956: 1, 4. ‘303: none. ‘160: none.

The parties also dispute whether the term “first and second location” in dependent claims 9 and 10 of the '956 patent is indefinite or infringed. Because this term arises only in dependent claims, however, the possibility exists that Plaintiff will not assert these claims at

trial. The parties thus agree and request that, in the interest of economy, the allegations of indefiniteness and/or infringement of this term be resolved, if necessary, later in the case during summary judgment briefing.

Below is a Joint Claim Chart setting forth the parties' proposed constructions for the disputed terms in the three asserted patents, along with citations to intrinsic and extrinsic evidence. The citations provided are merely representative of the respective elements and not exhaustive. In particular, since the three patents-in-suit share much of the same specification and similar prosecution histories, citations may be given to one patent without repeating citations for the identical or nearly identical portions of the other two patents.

CLAIM LANGUAGE (disputed terms in bold)	PLAINTIFF'S PROPOSED CONSTRUCTION AND EVIDENCE IN SUPPORT	DEFENDANT'S PROPOSED CONSTRUCTION AND EVIDENCE IN SUPPORT
<p><b>Ahead of</b></p> <p>Found in claim numbers:</p> <p>'956: 1, 4. '303: 1, 16. '160: 1.</p>	<p><b>Ahead of</b></p> <p><u>Proposed Construction:</u> Before in a sequence of answers</p> <p><u>Intrinsic Evidence:</u> '956 Patent: 11:12-17; FIGs. 10a-c. '303 Patent: 11:34-49; 12:10-15; FIGs. 10a-c, 12a-c. '160 Patent: 11:22-37; 11:64-12:6; FIGs 10a-c, 12a-c.</p> <p><u>Extrinsic Evidence:</u> Expert testimony of Ivan Zatkovich.</p>	<p><b>Ahead of</b></p> <p><u>Proposed Construction:</u> Placed before (i.e. above the other search results, not at a side of or in the middle of them)</p> <p><u>Intrinsic Evidence:</u> '956 patent: 11:7-17; FIGs. 10a-c '303 patent: 11:34-13:11; FIGs. 10a-10d, 12a-12d, 14a-14d '160 patent: 11:22-12:39; FIGs. 10a-10d, 12a-12d '956 Prosecution History, Final Rejection (Nov. 10, 2009) '956 Prosecution History, Applicant Arguments (Nov. 24, 2009)</p> <p><u>Extrinsic Evidence:</u> Rebuttal testimony of expert Dr. Ellis Horowitz</p>
<b>Answer</b>	<b>Answer</b>	<b>Answer</b>

1 2 3 4 5 6 7 8 9 10 11 12 13	Found in claim numbers:  '956: 1, 2, 4, 5. '303: 1, 14, 16. '160: 1, 3, 10.	<u>Proposed Construction:</u> Reply element of an answer page responsive to a query  <u>Intrinsic Evidence:</u> '956 Patent: Abstr.; 1:50, 2:13, 2:55-57; 3:2-3, 5:8, 6:49, 8:42; 11:48-58; FIGs. 10a-d. '303 Patent: Abstr; 11:20-12:19; FIGs. 10a-d; 12a-d. '160 Patent: Abstr; 11:8-12:6; FIGs. 10a-d; 12-d. Interview Summary (Apr. 16, 2007) [MOR0656-658]. Response to Office Action, at 13 (Jul. 28, 2008) [MOR0902-919]. Response to Office Action, at 14 (Dec. 4, 2008) [MOR0857-873].  <u>Extrinsic Evidence:</u> Expert testimony of Ivan Zatkovich.	<u>Proposed Construction:</u> Result returned in the search result page  <u>Intrinsic Evidence:</u> '956 Patent: 1:46-2:20; 2:50-57; 2:65-3:3; 3:46-50; 3:51-56; 5:8-13; 5:66-6:3; 6:37-41; 8:38-44; 8:59-9:4; 9:24-30; 9:41-45; 9:54-10:6; 11:7-17; FIGs. 5, 8, 9, 10 '303 Patent: 11:20-13:11; FIGs. 10a-10d, 12a-12d, 14a-14d '160 Patent: 11:8-12:39; FIGs. 10a-10d, 12a-12d '956 Prosecution History, Argument at 12-14 (July 28, 2008)  <u>Extrinsic Evidence:</u> Rebuttal testimony of expert Dr. Ellis Horowitz
14 15 16 17 18 19 20 21 22 23 24	<b>Answer page</b>  Found in claim numbers:  '956: 1, 4. '303: 1, 16. '160: 1.	<b>Answer page</b>  <u>Proposed Construction:</u> Plain meaning	<b>Answer page</b>  <u>Proposed Construction:</u> Unique search result page  <u>Intrinsic Evidence:</u> '956 Patent: 1:46-2:20; 2:50-57; 2:65-3:3; 9:54-10:6; 11:7-17; FIGs. 5a-5b, 8a, 10a-c '303 Patent: 11:20-13:11; FIGs. 10a-10d, 12a-12d, 14a-14d '160 Patent: 11:8-12:39; FIGs. 10a-10d, 12a-12d '956 Prosecution History, Argument at 12-14 (July 28, 2008)  <u>Extrinsic Evidence:</u> Rebuttal testimony of expert Dr. Ellis Horowitz
25 26	<b>Dynamically generate</b>	<b>Dynamically generate</b>  <u>Proposed Construction:</u>	<b>Dynamically generate</b>  <u>Proposed Construction:</u>

1	Found in claim numbers:	Create in real-time in response to a request	Plain meaning
2			<u>Intrinsic Evidence:</u>
3	'956: none.	<u>Intrinsic Evidence:</u>	'956 Patent: 1:31-45; 2:65-3:3; 3:42-
4	'303: 1.	'303 Patent: 1:27-29; 1:35-38; 1:39-41; 2:14-24; 10:11-15; FIGs. 9b.	4:12; 4:38-45; 5:8-35; 5:60-65; 6:33-
5	'160: 1.	'160 Patent: 1:27-29; 1:35-38; 1:39-41; 2:14-24; 9:66-10:3; FIGs. 9b.	41; 8:38-44; 8:63-9:4; 9:24-30; 9:41-
6		Interview Summary (Apr. 16, 2007) [MOR0656-658].	45; 9:54-10:21; 11:7-17; FIGs. 1, 6a-
7			6d
8		<u>Extrinsic Evidence:</u>	<u>Extrinsic Evidence:</u>
9		Expert testimony of Ivan Zatkovich.	Rebuttal testimony of expert Dr. Ellis Horowitz
10			
11	<b>Index / Indexing</b>	<b>Index / Indexing</b>	<b>Index / Indexing</b>
12	Found in	<u>Proposed Construction:</u>	<u>Proposed Construction:</u>
13	claim	A reference or locator, e.g., a	Indefinite
14	numbers:	Uniform Resource Locator	
15	'956: 1, 4.	<u>Intrinsic Evidence:</u>	<u>Intrinsic Evidence:</u>
16	'303: 1.	'956 Patent: 1:50-53; 2:11-20; 3:57-60; 3:62-4:12; 4:38-40; 9:41-	'956 Patent: 1:21-30; 1:46-2:20; 2:62-
17	'160: 1.	45; 9:55-56.	64; 4:5-12; 5:8-13; 8:38-9:4; 9:54-65;
18		'303 Patent: 1:54-59; 2:15-24; 4:10-32; 4:58-61; 9:65-10:2; 10:14-16.	10:7-10; 11:7-17; FIGs. 1, 2, 5a, 5b, 8
19		'160 Patent: 1:54-59; 2:15-24; 4:4-	'160 Patent: 11:55-64; 12:21-30
20		26; 4:52-55; 9:53-57; 10:1-3.	'303 Patent: 12:1-10; 12:31-40;
21		Interview Summary (Apr. 16, 2007) [MOR0656-658].	12:61-13:2
22		Preliminary Amendment, at 9 (May. 16, 2006) [MOR0782-	'956 Prosecution History, Claims (Mar. 25, 2003)
23		0799].	'956 Prosecution History, Preliminary Amendment (May 19, 2006)
24		Response to Office Action, at 14 (Jul. 28, 2008) [MOR0902-919].	'956 Prosecution History, Examiner's Amendment & Interview Summary (Jan. 8, 2010)
25		<u>Extrinsic Evidence:</u>	<u>Extrinsic Evidence:</u>
26		W3C Memo re Uniform Resource Locator (Mar. 21, 1994). Expert testimony of Ivan	Moricz Dep. Tr. (July 22, 2011) Kasha Dep. Tr. (June 3, 2011) Rebuttal testimony of expert Dr. Ellis Horowitz

1		Zatkovich.	
2	<b>Information location</b>	<b>Information location</b>	<b>Information location</b>
3		<u>Proposed Construction:</u>	<u>Proposed Construction:</u>
4	Found in claim numbers:	Location of an information source	Unique URL
5		<u>Intrinsic Evidence:</u>	<u>Intrinsic Evidence:</u>
6	'956: 1, 3, 4,	'956 Patent: Abstr.; 11-43-44;	'956 Patent: 1:25-27; 3:62-4:12;
7	8.	3:46-48; 4:13-18.	FIGs. 3-5, 10a-10c
8	'303: 1, 14.	'303 Patent: Abstr.; 3:66-4:1; 4:33-38.	'303 Patent: 11:55-13:11; FIGs. 10a-10d, 12a-12d, 14a-14d
9	'160: 1, 5, 10.	'160 Patent: Abstr.; 3:60-62; 4:27-32.	'160 Patent: 11:43-12:39; FIGs. 10a-10d, 12a-12d
10		<u>Extrinsic Evidence:</u>	'956 Prosecution History, Argument at 12-13 (April 16, 2007)
11		Expert testimony of Ivan Zatkovich.	<u>Extrinsic Evidence:</u>
12			Rebuttal testimony of expert Dr. Ellis Horowitz
13	<b>Information page</b>	<b>Information page</b>	<b>Information page</b>
14		<u>Proposed Construction:</u>	<u>Proposed Construction:</u>
15	Found in claim numbers:	Information collection displayable by a browser	Unique web page
16		<u>Intrinsic Evidence:</u>	<u>Intrinsic Evidence:</u>
17	'956: 1, 2, 3,	'956 Patent: Abstr.; 11-43-44;	'956 Patent: 1:46-2:20; 2:50-57; 2:65-3:3; 3:46-50; 4:7-12; 5:8-13; 5:66-6:3
18	4, 8.	3:46-48; 4:13-18.	6:37-41; 7:18-26; 8:38-44; 8:59-9:4;
19	'303: 1.	'303 Patent: Abstr.; 3:66-4:1; 4:33-38.	9:24-30; 9:41-45; 9:54-10:6; 11:7-17;
20	'160: 1.	'160 Patent: Abstr.; 3:60-62; 4:27-32.	FIGs. 5, 6, 8, 9, 10
21		<u>Extrinsic Evidence:</u>	<u>Extrinsic Evidence:</u>
22		Expert testimony of Ivan Zatkovich.	Rebuttal testimony of expert Dr. Ellis Horowitz
23			
24	<b>Query</b>	<b>Query</b>	<b>Query</b>
25	Found in claim numbers:	<u>Proposed Construction:</u>	<u>Proposed Construction:</u>
26		Inquiry	Query string of a URL

1 2 3 4 5 6	<p>'956: 3, 8. '303: 1. '160: 1, 5.</p>	<p><u>Intrinsic Evidence:</u> '303 Patent: 3:54-61; 3:66-4:3; 4:10-19. '160 Patent: 3:49-55; 3:60-64; 4:4-13.</p> <p><u>Extrinsic Evidence:</u> Expert testimony of Ivan Zatkovich.</p>	<p><u>Intrinsic Evidence:</u> '956 Patent: 1:31-45; 2:33-36; 2:42-45; 2:65-3:3; 3:42-4:12; 4:38-45; 4:56-65; 5:8-35; 5:66-7:17 '956 Prosecution History, Preliminary Amendment (May 19, 2006)</p> <p><u>Extrinsic Evidence:</u> Kasha Dep. Tr. (June 3, 2011) HTML 4.01 Specification (1999)</p>
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	<p><b>Search the Internet</b></p> <p>Found in claim numbers:</p> <p>'956: 1. '303: 1. '160: 1.</p>	<p><b>Search the Internet</b></p> <p><u>Proposed Construction:</u> Directs the search service computer to respond with information about relevant resources in the Internet</p> <p><u>Intrinsic Evidence:</u> '956 Patent: 4: 38-45; 4:48-50; 8:38-44; 9:54-58; 11:39-45; FIG. 1. '303 Patent: 8:61-67; FIG. 1. '160 Patent: 8:50-56; FIG. 1. Office Action (Jun. 9, 2009) [MOR0682-702]. Response to Final Office Action, at 13 (Apr. 17, 2009) [MOR0854-856]. Response to Office Action, at 8-9 (Sep. 9, 2009) [MOR0920-931].</p> <p><u>Extrinsic Evidence:</u> Chris Sherman and Gary Price, <i>The Invisible Web</i>, at Chapters 1-2 (2001). Expert testimony of Ivan Zatkovich.</p>	<p><b>Search the Internet</b></p> <p><u>Proposed Construction:</u> Search a worldwide collection of networks, not a database on the search service's server</p> <p><u>Intrinsic Evidence:</u> '956 Patent, 1:21-2:20; 4:38-45; 8:38-44; FIGs. 8a-8d, 9a-9b, 10a-10c '956 Prosecution History, Argument at 12-14 (July 28, 2008) '956 Prosecution History, Argument at 14 (Dec. 4, 2008) '956 Prosecution History, Argument at 13 (May 17, 2009) '956 Prosecution History, Argument at 7-9 (Sept. 9, 2009)</p> <p><u>Dictionary/Treatise Definitions:</u> Microsoft Computer Dictionary (5th ed. 2002)</p> <p><u>Extrinsic Evidence:</u> Moricz Dep. Tr. (July 22, 2011) Kasha Dep. Tr. (June 3, 2011) Rebuttal testimony of expert Dr. Ellis Horowitz</p>
24 25 26	<p><b>Second information location from which the</b></p>	<p><b>Second information location from which the input field is generated</b></p>	<p><b>Second information location from which the input field is generated</b></p> <p><u>Proposed Construction:</u></p>

<p><b>input field is generated</b></p> <p>Found in claim numbers:</p> <p>'956: 1, 4. '303: none. '160: none.</p>	<p><u>Proposed Construction:</u> Plain meaning</p>	<p>Second information location from which the input field is retrieved or embedded</p> <p><u>Intrinsic Evidence:</u> '956 Patent: 10:3-10; 11:7-17; FIGs. 10a-c '303 Patent: 11:20-13:11; FIGs. 10a-10d, 12a-12d, 14a-14d '160 Patent: 11:8-12:39; FIGs. 10a-10d, 12a-12d '965 Prosecution History, Amendment (Dec. 4, 2008) '160 Prosecution History, Argument at 8 (April 21, 2009)</p> <p><u>Extrinsic Evidence:</u> Rebuttal testimony of expert Dr. Ellis Horowitz</p>
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### III. Length of and Proposed Order of Presentation at Claim Construction Hearing

The parties request that the Court allot four hours for the Hearing. The parties also request that: (a) the disputed terms be addressed on a term-by-term basis, (b) each party be allowed half of the available time for presenting evidence and argument, and (c) Plaintiff's presentation may precede Defendant's for each term.

### IV. Live Testimony

The Plaintiff proposes to call its technical expert, Ivan Zatkovich, to opine on claim construction. Mr. Zatkovich's expert report pursuant to Fed. R. Civ. P. 26(a)(2)(B) was timely served on the Defendant and is available to the Court upon request. The Defendant may cross-examine Mr. Zatkovich and call Dr. Ellis Horowitz if necessary to rebut Mr. Zatkovich's testimony.

### V. Pre-Hearing Conference

The parties believe a pre-hearing conference prior to the Hearing would be helpful to address the schedule for the Hearing. The parties propose a 30 minute pre-hearing conference



1 at the Court's convenience within the week prior to the hearing.

2 **VI. Independent Expert and Tutorial**

3 The parties have jointly proposed Dr. Don Turnbull as a technical advisor to the  
4 Court (Docket No. 28). The parties expect Dr. Turnbull's presence at the hearing would  
5 assist the Court in claim construction.

6 **VII. Tutorial**

7 If the Court retains an independent expert, then the parties do not propose that a separate  
8 technology tutorial would be necessary, although each party will likely present basic  
9 technological background with its arguments. However, the parties are open to presenting a  
10 tutorial if the Court decides not to use an independent expert or believes a tutorial would be  
11 beneficial. If such a tutorial is necessary, the parties request an additional hour for the hearing  
12 and request that each party be allotted 30 minutes for a tutorial.

1 Dated this 26th day of August, 2011.

2  
3  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26th day of August, 2011, I caused the foregoing to be served on the following attorneys for defendant by electronic service through the Court's ECF system.

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